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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ESMAIL GHANE

Defendant and Appellant.

G049749 & G049752

(Super. Ct. Nos. 02SF0387,
00SF0418 & 00SF0418R)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Thea Greenhalgh, by appointment of the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

* * *

This case has a history that is long, tortuous and torturous. It stems from a six-count felony complaint filed at the beginning of the century. It has wended its way through several trial judges, several psychiatrists and several hearings, and we find ourselves as unable to provide it final resolution as they have been.

The trial of defendant and appellant Esmail Ghane's felonies was delayed when he was found incompetent to stand trial in 2000. He was found competent again in 2001, and charges were reinstated. He was represented by counsel and pled guilty. He was placed on probation. In 2004, Ghane was charged with violating his probation, and again his competency came into question. He was found competent and sentenced to four years in state prison for the probation violation and the felonies which generated it.

Ghane then began a series of attempts to withdraw his plea, which were denied. He attempted appeals and writs from those actions, but lost each time, the last being in 2005.

Then Ghane filed the action which engendered this appeal. Denominated "Motion to Withdraw Guilty Plea; Replace it with Not Guilty Plea, and to Acquit," it was denied by the trial court on January 3, 2014. The trial court's reason for denying it was that it simply had no jurisdiction to hear either a motion for withdrawal of plea nor a writ of *coram nobis* more than a decade after the fact. And a writ of *coram nobis* cannot be used as a seriatim attempt to prevail where a nonstatutory motion to dismiss would be untimely. Nor can it be filed in the trial court after the matter has been affirmed on appeal. (*People v. Kim* (2009) 45 Cal.4th 1078.) He appealed, and the trial court issued him a certificate of probable cause.

We appointed counsel to represent Ghane on that appeal. Counsel filed a brief which set forth the procedural facts of the case (the facts of the crimes themselves are irrelevant because the argument is solely directed at Ghane's plea and representation). Counsel did not argue against her client, but advised us there were no issues to argue on his behalf. Ghane was invited to express his own objections to the proceedings against him, but did not. Under the law, this put the onus on us to review the record and see if we could find any issues that might result in some kind of amelioration of Ghane's lot.

(*People v. Wende* (1979) 25 Cal.3d 436.) It should be emphasized that our search was not for issues upon which Ghane *would* prevail, but only issues upon which he *might possibly* prevail.

We have examined the record and found no arguable issue. This is not surprising. In fact, it is what we find in the vast majority of cases in which appellate counsel files a *Wende* brief. Even the most cynical observer of the appellate system would have to recognize that appellate counsel has a financial incentive for finding issues. The simple fact is that counsel makes more money if he/she finds an issue that is arguable than if he/she does not. So while it sometimes happens that an appellate court will find issues after appellate counsel has thrown in the towel, it is unusual.

This case is not unusual – at least not in any way that would benefit Ghane. In fact, the procedural posture of the case limits us to one issue – can he seek to withdraw a plea in 2015 that was entered in 2000. He cannot – at least not by a motion to withdraw the plea and petition for writ of *coram nobis* in the trial court – and appellate counsel could do nothing but request independent review by this court under *Wende*. Having conducted that review, we can find no arguable issues.

The judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

O’LEARY, P. J.

ARONSON, J.